well (1847) 10 Beav. 412, his action should have been against them personally. But they held in trust for him merely a power, *cf. Downing* v. *Marshall* (1861) 23 N. Y. 366, not a tangible trust *res* against which he could proceed,—the business was held in trust for other beneficiaries. If they had employed him voluntarily, or had been compelled to do so, *cf. Hibbert* v. *Hibbert, supra; Williams* v. *Corbet, supra,* he would have acquired rights against the corpus of the latter trust estate for services rendered, Lewin, Trusts (12th ed.) Ch. XXV, § 2, sub-sec. 11; *cf. Norton* v. *Phelps* (1877) 54 Miss. 467, but since he was not employed, it is difficult to see in what way he acquired any lien upon the assets of the business.

WITNESSES—EXPERT TESTIMONY—COMPULSORY PROCESS.—In an action to recover the value of land taken by the defendant, a municipal corporation, under the right of eminent domain, the defendant called two real etsate men as expert witnesses. They objected to testifying and were sustained in this objection by the trial court. *Held,* expert witnesses cannot be compelled to testify by private litigants in civil actions. The decision below was reversed, however, on other grounds. *Pennsylvania Co. for Insurances etc.* v. *City of Philadelphia* (Pa. 1918) 105 Atl. 630.

A fundamental principle of evidence is that there is a general duty upon every citizen to give what testimony he is capable of giving; it is one of the incidents of citizenship, a service owed to society by all its members. 3 Wigmore, Evidence § 2192; see *West* v. *State* (1853) 1 Wis. 209, 233, 234. An expert or person skilled in some profession or trade is held by the weight of authority to owe this general duty no less than other witnesses. *Burnett* v. *Freeman* (1909) 134 Mo. App. 709, 103 S. W. 121; *Flinn* v. *Prairie County* (1895) 60 Ark. 204, 29 S. W. 459. The distinction laid down in the English case of *Webb* v. *Page* (1843) 1 C. & K. *23, that an expert should receive extra compensation for giving his professional opinion has been generally repudiated in this country. 1 Greenleaf, Evidence (16th ed.) § 310; *Dixon* v. *People* (1897) 168 Ill. 179, 48 N. E. 108; *ex parte Dement* (1875) 53 Ala. 389. Although the rule was developed primarily in criminal cases where the state's interest in securing testimony was more immediate, the fact that the litigation is between private parties is now immaterial. See *Dixon* v. *People, supra,* 192; *Butler* v. *Toronto Mutoscope Co.* (1905) 11 Ont. L. R. 12; *Burnett* v. *Freeman, supra.* By the general common law rule, therefore, experts may be compelled to testify either to facts within their own knowledge or to their extemporaneous opinion of the facts presented to them, without any increase over the fees paid to other witnesses. *Main* v. *Sherman County* (1905) 74 Neb. 155, 103 N. W. 1038; *Burnett* v. *Freeman, supra.* But where an expert is required to undertake some professional task apart from merely testifying, as to make a *post mortem* examination, or a chemical analysis in order to formulate an opinion, he cannot be compelled to perform the service. *Schofield* v. *Little* (1907) 2 Ga. App. 286, 58 S. E. 666; see *Flinn* v. *Prairie County, supra,* 207, 208; *Board of County Comm'rs.* v. *Lee*

(1893) 3 Colo. 177, 32 Pac. 841; *People* v. *Montgomery* (N. Y. 1871) 13 Abb. Pr. (N. S.) 207, 240. "When on request such services are performed for another, extra compensation may be demanded upon an implied promise in the absence of an expressed promise of compensation." *Tiffany* v. *Kellog Iron Works* (N. Y. 1908) 59 Misc. 113, 109 N. Y. Supp. 754; see *Philler* v. *Waukesha County* (1909) 139 Wis. 211, 215, 120 N. W. 829. The facts of the present case seem not to bring it within this last rule since the witnesses were only required to express an opinion of the value of the land. The decision, therefore, seems in conflict with the established principles examined here.

WORKMEN'S COMPENSATION—BREAK IN EMPLOYMENT—STRIKES.—A miner left work during a strike, which was ended after one week through government intervention. Work was resumed under an agreement dated as of the day the strike began. In a claim under the British Workmen's Compensation Act of 1906, by which (Sched. I, § 2c) absence "due to illness or any other unavoidable cause" constitutes a break in the employment for the purpose of computing average weekly wages, the question was whether absence during the strike effected a break in the employment. The House of Lords, affirming the decision of the Court of Appeal, *held,* it did not. *Price* v. *Guest, Keen & Nettlefolds, Ltd.* (1918) 119 L. T. 345.

For a discussion of the decision of this case by the Court of Appeal, see 17 Columbia Law Rev. 732.

WORKMEN'S COMPENSATION ACTS—MURDER ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT.—A head waiter, pursuant to his duty, discharged a recalcitrant subordinate. Angered by this action, and further inflamed by drink, the subordinate returned three hours later to the master's premises and killed the head waiter, who, at the time, was eating lunch in the hotel. *Held,* death arose out of and in the course of employment. *Cranney's Case* (Mass. 1919) 122 N. E. 266.

Compensation acts generally provide that an injury, for which recovery can be had, must occur in the course of and arise out of the workman's employment. Mass. Acts, 1911, c. 751, § 1; N. Y. Laws, 1913, § 10; 6 Edw. vii., c. 58, § 1, sub-s. 1; *cf.* 39 Canadian Law Times, 204. A servant, who is eating on his master's premises is within the "course of his employment." *Brice* v. *Lloyd, Ltd.* [1909] 2 K. B. 804; *Blovelt* v. *Sawyer* [1904] 1 K. B. 271. Applying reasonable foresight as the test to determine whether the risk "arises out of the employment," F. H. Bohlen, "The Drafting of Workmen's Compensation Acts," 25 Harvard Law Rev. 517, 519, but see Honnold, Workmen's Compensation Law, § 101, the head waiter's duty, in the instant case, might naturally be expected to provoke to violence those whom he disciplined or discharged. *Polar Ice Co.* v. *Mulray* (Ind. 1918) 119 N. E. 149; *San Bernardino Co.* v. *Industrial Acc. Comm. of Cal.* (Cal. 1917) 169 Pac. 255. That death results, instead of a broken bone, is of no significance, see *Reithel's Case* (1915) 222 Mass. 163, 109 N. E. 951, so long as the force ultimately causing the injury springs from the performance of a prescribed duty. Besides, the fact that